Law of the Sea Negotiations: Geneva and Beyond

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THE LAW OF THE SEA NEGOTIATIONS: GENEVA AND BEYOND

Introduction

Results of the UN-sponsored efforts to obtain a comprehensive Law of the Sea Treaty have generated both claims of significant progress and criticism of scant tangible achievement. Indeed, the analogy of the glass appearing half full to the optimist and half empty to the pessimist is not inappropriate. In an attempt to put the situation into perspective, this study reviews the results of the Caracas and Geneva LOS sessions and analyzes the evolving stands of principal parties relative to the major issues still outstanding. Against this background, the study hazards some projections for the outcome of future LOS negotiations, most immediately the substantive session now scheduled for New York in the spring of 1976.

The General Setting

The LOS negotiations have been more protracted and involved than was generally anticipated when the UN General Assembly voted in 1970 to convene a Third UN Law of the Sea Conference. The first LOS Conference in 1958 and the second in 1960, by contrast, had much more limited objectives and fewer participating nations; even so, although achieving agreement on several important ocean matters, they failed to reach accord on one of their most important goals -- that of setting a universal limit to the breadth of the territorial sea. Since then LOS issues have become vastly more complex; there has been a tremendous increase in maritime trade, fishing, and other activities such as offshore mining and research. This has led to greater problems of marine pollution, depletion of fish stocks, and jurisdictional disputes. Many of the nearly

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150 nations participating in the current LOS Conference -- the largest UN undertaking thus far -- came into existence subsequent to the earlier LOS conferences, and there has been a tendency on their part, and by other developing countries, to critically examine international sea legislation which they had no hand in fashioning. The LOS negotiations reflect to some extent the atmosphere of disharmony and economic rivalry prevailing between the developing and developed nations.

On the other hand, an efficacious organization and the dedicated leadership of knowledgeable officers from both developed and developing states have helped to keep the LOS Conference on track and the polemics under control. Moreover, as individual delegations have steadily gained greater expertise in the intricacies of LOS subject matter, there has been a discernible shift away from ideological considerations to pragmatic concerns. In fact, the LOS issues are so varied and the self interests so divided, it is not purposeful to speak of monolithic opposing blocs.

Since the initial organizational session in New York in December 1973, the work of the Third UN Law of the Sea Conference has been shared by one general and three main committees, each of which is charged with drafting precise texts on distinct but interrelated aspects of the projected oceans treaty. Thus, Committee I has been tasked with drawing up specifics for the establishment of an international Authority to administer the exploitation of deep seabed mineral resources beyond the maritime jurisdictional limits of the coastal states. There is long-standing agreement in the UN that these resources, the "common heritage of mankind," are to be shared by all nations equitably, but the translation of this broad understanding into operating procedures has proven to be enormously complicated. The deep seabed issue, in fact, has become the major deterrent preventing rapid progress in concluding an overall treaty. Although the issues under discussion in Committee II -- territorial sea limits, straits passage, fisheries, and the creation of an offshore economic zone -- are more tangible, they are also complex and

controversial. Committee III faces the difficult task of bridging differing views on marine research, pollution control, and the transfer of marine technology. Because of their diverse natures, progress on the various LOS issues has been uneven, and the interaction of the issues makes it difficult -- if not impossible -- to reach final accord on any one question until the entire treaty package is at least roughed out. A good example of this interdependence is afforded by the General Committee's work on dispute settlement, a priority topic, but one that touches all LOS issues and therefore is dependent upon conclusions reached in the three main committees.

The rules of procedure for the LOS Conference, adopted at the outset of the Caracas session in June 1974, also help to explain the lengthy debate of various issues. By these rules it was agreed that there would be no voting on substantive matters until all efforts at consensus were exhausted. Final adoption of the convention, furthermore, is to be achieved by a two-thirds majority of those present and voting, but including at least an absolute majority of participants -- about 75. While this "gentlemen's agreement" on consensus may have facilitated footdragging tactics by a few countries bent on protecting their interests, most nations have exhibited a strong desire to achieve an LOS treaty through mutual accommodation.

The Caracas (1974) and Geneva (1975) Sessions

Initially, at least, there was a tendency to label the 10-week LOS negotiations held at Caracas from 20 June to 29 August 1974 a failure. The session was marked by sometimes impassioned oratory, as individual states laid out their LOS positions, but it was short on concrete results. For one thing, the conference suffered from a carryover of a UN General Assembly style more suited to the discussion of abstract issues than the formulation of texts designed for inclusion in treaties affecting the immediate interests of states in dynamic maritime situations. What was most missing at Caracas, however, was sufficient political

will to make hard negotiating choices. Contributing to this was the conviction, held by most of the attending nations, that Caracas was not to be the last session.

Subsequently, however, the Caracas session has come to be viewed by many of the states as accomplishing a great deal in the way of airing the issues and providing the foundation and building blocks of an eventual treaty. To a considerable extent the various issues and proposals within the mandate of the three main committees were formulated into a comprehensive set of informal working papers reflecting the principal views on each topic. This facilitated the examination of the issues and alternative proposals during the intersessional period leading up to the 1975 Geneva talks. Among the achievements at Caracas were the proposed inclusion in an LOS Treaty of a 12-mile* territorial sea and a 200-mile exclusive economic zone, subject to conclusion of a satisfactory overall treaty package. In fact, these concepts still constitute the keystones of compromise favored by a large majority of states. Discussions of deep seabed mining at Caracas stand in stark contrast; although first steps were taken on the negotiation of such basic matters as the system and conditions of exploitation, the pervasiveness of ideologies on this issue was clearly apparent.

Departing from the negotiating style employed at the Caracas meeting, the 8-week LOS session at Geneva from 17 March to 9 May 1975 relied heavily on small working groups and informal discussions to facilitate compromise and trade-offs. The so-called Evensen Group, for example, comprising some 40 nations from all regions and chaired by Minister Jens Evensen of Norway, was largely responsible for the considerable progress made in Committee II on the important economic zone issue. In general, the informal approach at Geneva proved highly effective in narrowing differences on most issues.

** Distances throughout this working paper are in nautical miles unless specified otherwise.*

Toward the end of the Geneva session, the chairmen of the three main committees compiled an informal single negotiating text of the projected LOS Treaty based on their interpretations of the discussions up to that point; a text was also submitted by the chairman of the dispute settlement group. Although this compilation did not purport in any way to be a negotiated text or accepted compromise, it was intended to serve as a procedural device and to provide a basis for subsequent negotiation. As such, it is viewed by most of the nations involved as constituting a major milestone on the path toward an eventual LOS Treaty.

Despite the disclaimer to the contrary, the single negotiating text comes close to representing an accepted compromise on most of the issues under the purview of Committees II and III. However, the draft text concerning the deep seabed mining issue, being handled by Committee I, still reflects the wide gap of disagreement existing between the developing and developed nations on this major subject.

The single negotiating text is proving to be extremely valuable in the many bilateral and multilateral discussions now being conducted during the current intersessional period leading up to the LOS Conference meetings scheduled for next year in New York. It serves to focus attention on the specifics of the different issues, making it easier for individual states to assess the various treaty proposals from the standpoint of their own national interests. This assistance is particularly important since the LOS undertaking appears to have reached a point where a majority of states will have to make a decision whether a timely conclusion of an overall treaty is in their national interests or whether there will be recourse to unilateral actions to resolve immediate maritime problems. Following is a reading of where the negotiations of the various LOS issues stand, and where they appear to be heading.

Territorial Sea

The near total consensus reached at the 1974 LOS Conference session at Caracas on a 12-mile territorial sea limit was enhanced in Geneva by positive achievements on technical aspects of this

issue. Small informal consultative groups drew up specific language on these essential details for incorporation in the single negotiating text. The single text reflects general agreement on rules for establishing baselines, arrangements for handling boundary delimitation problems, and the definition of innocent passage in the territorial sea. As in the 1958 Territorial Sea Convention, passage is defined as being "innocent" so long as it is not prejudicial to the "peace, good order or security" of the coastal state. In addition, the negotiating text enumerates certain activites considered to be prejudicial.

Although there remain a few dissenters, no effective opposition to a 12-mile territorial sea now exists; none can be expected to be generated so long as other issues in the LOS context are satisfactorily resolved. Most of the few proponents of broader territorial seas as wide as 200 miles now realize that they must look to coastal state rights within the proposed economic zone to help satisfy their original reasons for claiming extensive territorial waters. Ecuador, however, is fearful that adequate coastal state authority would not be guaranteed under an economic zone regime. It presented draft articles on the territorial sea at Geneva calling for a breadth not exceeding 200 miles in which there would be two transit regimes -- one with innocent passage for a zone "near the coast," and the other with freedom of passage in the remainder of the "territorial sea." Although Ecuador's proposal received varying degrees of support from a smattering of states, others expressed regret that such a retrogressive step had been taken at this stage of the LOS Conference.

Straits Transit

Steady progress has been made in resolving the critical question concerning passage through and over straits used for international navigation. Following this year's LOS Conference session in Geneva, the US delegation reported that the trend had swung strongly in favor of unimpeded passage. Initially considered to be one of the more controversial aspects, the

straits transit issue is now seen as one of the bright spots of the LOS negotiations to date. The broad ideological opposition to the principle of unimpeded passage voiced by the Third World nations at Caracas apparently has lost ground to more pragmatic considerations. In informal Geneva discussions a number of delegations indicated for the first time that their governments would ultimately support a regime of unimpeded passage through and over international straits. This reflects a growing perception by non-major maritime states of the importance to world trade of freedom of navigation and acceptance of the notion that a Treaty was not possible without accommodation of this position.

The single negotiating text on straits endorses the principle of unimpeded passage, although this specific wordage is eschewed in favor of the term "transit passage." This new terminology, defined in the text as being the exercise of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of a strait, could go a long way toward overcoming the Third World's ideological aversion to "free" or "unimpeded" passage. The single negotiating text also seeks to mollify coastal state concern by placing certain obligations on the flag state regarding pollution, safety, avoidance of threat or use of force contrary to the UN Charter, etc. The text, which will be used as the basis for negotiation of the straits transit issue at the next LOS Conference session in New York, was produced by a private Geneva negotiating group, chaired by the United Kingdom and Fiji, and including representatives of the Arab states and developing nations from all regions. While there will be important problems with this text for various countries, it nevertheless constitutes a good basis for negotiating the straits transit issue.

The impingement of external factors on the straits transit issue is particularly evident in the troubled Middle East, where control of vital trade and supply routes is of major importance. The Arab Group is divided on the straits transit issue, with such states as Iraq, Kuwait, and Jordan supporting the principle of

unimpeded passage, while others, such as Oman and Yemen, remain strongly opposed. Iran, on the other hand, favors unimpeded passage for ships of those states bordering on semi-enclosed seas such as the Persian Gulf and innocent passage for ships of all other nations. In general, the Arab states would like to see all straits in the Middle East area exempted from a regime of unimpeded passage. The overall attitude of the Arab Group toward a universal regime of unimpeded passage through international straits remains a crucial factor in the successful outcome of this issue. The key to obtaining broad Arab support probably rests with Egypt. Although Egypt thus far has come out in favor of innocent passage for all straits -- with a distinction drawn between commercial and military vessels -- there have been some recent indications that it is prepared to modify its present stand.

Despite these promising developments, some influential nations remain strongly opposed to the principle of unimpeded passage in international straits that are overlapped by the territorial waters of one or more states. Included are such countries as the PRC, Spain, Oman, Yemen, and the Philippines. Their opposition -- based on diverse considerations -- is particularly significant since more than 100 international straits, including Gibraltar and Malacca, will become overlapped by territorial waters if a 12-mile territorial sea is universally adopted. Under existing international law, coastal states have broad discretionary control over foreign maritime traffic within their territorial waters under the principle of "innocent passage." Opponents of an unimpeded passage regime argue that the innocent passage principle should apply equally to all territorial waters, including overlapped straits. Spain, in particular, has pushed this line hard with Third World countries and has played on their ideological opposition to the world powers by attempting to draw a distinction between commercial and military vessels and aircraft in terms of straits passage.

The United States and other maritime powers such as the USSR and the UK, have made it clear that they will not be a party to an LOS Treaty that does not include provision for unimpeded passage through and over international straits by all ships and planes without distinction; the right of submerged transit by submarines is also included in this stipulation. The maritime countries take the position that vessels and aircraft in transit through and over international straits should enjoy the same freedom of navigation and overflight -- for the sole purpose of expeditious passage -- as they do on and over the high seas. In all other respects, overlapped straits would be territorial waters under the sovereignty of the coastal state. At the same time, the United States has indicated its willingness to except certain straits from a regime of unimpeded passage, such as those 6 miles wide or narrower and those that do not connect two parts of the high seas. It has also indicated support of flag state obligations regarding safety, pollution, and threats made against the security of straits states.

Archipelagos

An important factor in achieving a suitable agreement on straits transit is the resolution of the related archipelagic issue. The claims of archipelagic states such as Indonesia, the Philippines, Fiji, and the Bahamas basically involve the assertion of sovereignty over all waters enclosed by baselines connecting the outermost points of the outermost islands. Such claims impinge on international navigation and overflight in vast areas heretofore regarded as high seas. Provided the archipelagic concept is adopted by the LOS Convention, qualifying states would gain much, since in addition to sovereignty over their archipelagic waters, they also would enjoy the 12-mile territorial sea and the 200-mile economic zone projected for coastal states.

The United States has engaged in extensive private discussions with the archipelagic states in an attempt to define requirements for special archipelagic regimes and to establish suitable passage regimes within archipelagic waters. The effort of the

United States in these negotiations has been keyed to obtaining the support of archipelagic states for US straits objectives. Mutually satisfactory agreements have been reached with Fiji and the Bahamas. The agreements provide for unimpeded transit of both commercial and military vessels and aircraft through, over, and under archipelagic waters in designated lanes; elsewhere in archipelagic waters transit would be governed by the principle of innocent passage. Bilateral discussions with Indonesia over the past year or so have thus far been inconclusive, although a satisfactory outcome seems promising, especially in view of Indonesia's interest in being accorded the status of an archipelagic state. The Philippines, however, has shown little inclination to accede to any provisions for unimpeded transit through its waters.

Economic Zone

One of the achievements of the LOS negotiations thus far has been the general acceptance of the concept of a 200-mile economic zone adjacent to the coastal state, wherein the coastal state would have exclusive control over seabed mineral resources and the right to manage coastal fisheries. Building on a broad consensus reached at Caracas, this concept took more definitive form at this year's Geneva session, largely through the efforts of informal working groups. As now presented in Committee II's informal negotiating text, the economic zone proposal strongly reflects the views of the developing coastal states.

Crucial to agreement on the economic zone are questions concerning its status and the related issue of residual rights. The maritime powers want these waters to remain a part of the high seas, even though coastal states would have jurisdiction over living and mineral resources as well as certain controls over scientific research and marine pollution. However, the developing coastal states, led by territorial extremists who formerly sought a broad 200-mile territorial sea limit, successfully shaped the negotiating text to define the economic zone as being almost exclusively coastal, excepting only narrowly

prescribed international freedoms of navigation, overflight, and the right to lay and maintain pipelines. Many nations fear that should such a definition prevail, coastal state jurisdiction would expand over the years and the economic zone would, in essence, become a 200-mile territorial sea.

Many LOS negotiators feel that settlement of this issue demands that the economic zone be given a completely new legal status, one in which a balance is struck between coastal controls and international maritime rights. Thus, essential high seas rights would be preserved in the economic zone by carefully spelling out residual rights. This approach, moreover, would guard against the possible erosion of traditional high seas freedoms beyond the economic zone. Efforts to reach such a balance at Geneva were complicated by the demands of landlocked and geographically disadvantaged nations for overland transit rights to the sea through neighboring states as well as special fishing privileges in the economic zone. This group of nations, some 48 strong, conceivably could block agreement on the definition of the zone, either by opposing a compromise formulation or by supporting a text totally unacceptable to a large percentage of other states.

Continental Margin

The problem which evolved in Caracas in regard to jurisdiction over the continental margin where it extends beyond the projected 200-mile economic zone came close to being resolved in Geneva. A number of broad margin states are increasingly realizing that wide acceptance of their mineral claims to the outer edge of the continental margin can only be gained by agreement to a form of revenue sharing with the international community. At stake is that portion of the seabed lying between 200 miles and the edge of the margin. Some African, landlocked, and geographically disadvantaged states, which initially opposed the broad margin concept, have shown interest in such a compromise, depending on the revenue sharing formula, the method of delineating the outer edge of the margin, and in some cases, the resolution of other

issues in the negotiations. The single negotiating text provides a basis for possible agreement by awarding to coastal states sovereign rights over the natural resources of the entire margin and by calling for revenue sharing. Still to be decided, however, is a specific revenue-sharing formula, and whether or not broad margin developing states will also be required to share. At the close of the Geneva session the sharing compromise was still opposed outright by two influential developed broad margin countries -- Australia and the USSR. The United States, also a broad margin state, in the last weeks at Geneva proposed a system which would ease the financial burden on offshore oil companies by holding off payment for the first 5 years of production. Thereafter, payment, based on the value of production at the wellhead, would increase from one percent in the sixth year to a maximum of five percent in the tenth year and thereafter.

A precise definition of the outer edge of the margin has not yet received attention in the general negotiations, although various formulas have been proposed at informal meetings of broad margin states. Though most nations have not addressed this issue per se, landlocked and disadvantaged states have indicated disapproval of a broad jurisdiction definition because it encroaches on the proposed international area, where they expect to share in the mineral wealth under the "common heritage" principle.

Islands

Another vexing marine boundary problem relates to the extent of island jurisdiction. The single negotiating text accords islands, with only minor exceptions, all of the rights enjoyed by continental coastal nations. The only limitation is that "rocks which cannot sustain human habitation or economic life of their own" shall have no exclusive zone or continental shelf. Most developing countries and some other countries strongly oppose such generous terms for islands, which would reduce the overall international area of the high seas. Many negotiators also feel that the vagueness of this definition would only exacerbate many island jurisdictional disputes, such as that involving Britain's

small Rockall Island, whose status will determine jurisdiction over a large segment of the North Atlantic's seabed. Equally significant is the weight to be given the Greek Dodecanese Islands -- off the mainland of Turkey -- in deciding resource jurisdiction over the Aegean Sea. It has become increasingly apparent that solving these essentially bilateral island jurisdictional issues will be almost impossible within the context of a multinational LOS treaty. Some suggest that provision for a compulsory dispute settlement mechanism would be helpful in solving these problems; others are strongly opposed to this suggestion.

Fisheries

The negotiation of sensitive and complex fishing issues in Geneva was based on a host of earlier preparatory bilateral and multilateral consultations. Most noteworthy in these negotiations was the broad acceptance of a coastal state's comprehensive management jurisdiction over coastal species within the 200-mile economic zone; coastal state responsibility for the conservation of stocks; and coastal state obligation to optimally use stocks, if necessary by allowing foreign states to take the unutilized portion. The crucial question of who may harvest the unutilized portion of the coastal fish stock, and under what conditions, remains unresolved. The negotiating text gives the coastal state the right to set conservation and management measures over coastal fisheries and strong discretionary powers in determining which states shall have access to the fish in its zone. The text lists a number of topics related to coastal fishing over which the coastal state may institute regulations in order to insure that other states fishing in its zone comply with its conservation measures and other terms and conditions.

Distant-water fishing states, seeking special consideration for their traditional fishing activities during a transition or phase-out period, view the list as an invitation to the coastal state to control virtually every aspect of fishing or fishing-related activity in the zone, and will undoubtedly seek to have

it deleted. Some negotiators, while apprehensive about a coastally oriented text on coastal fisheries, feel that the introduction of a good dispute settlement mechanism will to some degree safeguard the rights of other states. In Geneva a group of landlocked and other geographically disadvantaged states rallied strongly against coastal state efforts to attain full control over coastal fisheries by introducing a draft text designed to assure their equal and non-discriminatory access to the fish in the economic zone of neighboring coastal states. Th issue has swollen the ranks of this group, with many nations -- such as West Germany -- claiming to be "geographically disadvantaged." This aspect could prove to be a major stumbling block in gaining final agreement on an economic zone.

Substantial progress was made in Geneva toward final agreement in regard to fishing rights over anadromous species, like salmon, which originate in fresh water streams and migrate into the oceans beyond the economic zone. As worked out informally between host states like the United States and Canada, and salmon-fishing states such as Japan, the negotiating text restricts such fishing to the economic zone and gives clear rights to the host state to manage and conserve the stocks within its zone. Consideration is given to minimizing economic dislocation in other states that normally harvested these stocks, and agreements between host states and other states is recommended for future enforcement regulations over fishing for these species beyond the zone.

The negotiations covering highly migratory species like tuna, which because of their transoceanic movements require special international or regional management and conservation arrangements, were disappointing. While the negotiating text calls for the establishment of appropriate international fishing organizations in each region and requires all states to participate in their work, it also presents serious uncertainties for traditional tuna fishermen by giving to the coastal state the right to take these species in its economic zone to the limit of its harvesting

capacities. Such an arrangement could lead to total coastal state takeover of tuna fishing in the economic zone, with a resulting disruption of regional management of the species and harm to existing tuna fleets. It is not now clear how coastal states such as the west coast Latin American countries would implement such an arrangement, particularly in regard to the powers and functions of a regional fishery organization. While giving such an organization conservation powers appears acceptable to most, there is likely to be strong disagreement as to whether organization decisions on other measures, such as the allocation of fishing quotas, would be mandatory.

Several US negotiators are of the opinion that the tuna text problems can be solved only by direct negotiation with certain Latin American countries, perhaps along lines similar to those employed in pre-Geneva talks that led to an acceptable settlement with Japan of the anadromous species problem.

Marine Pollution

Although some progress was made at Geneva, the session did not produce as many concrete results as had initially been expected. Meaningful environmental protection obligations emerged on several non-vessel-source pollution issues, such as landbased pollution and dumping of wastes at sea. But there were several dissenters such as India and Brazil. Moreover, LDC support for a double standard -- which would allow less stringent LDC obligations consistent with their national economic policies -- remains a major problem, although there were indications that a compromise might be reached. The marine pollution single text addresses in the most general terms the double standard for controlling pollution emanating either from the land or from such continental shelf activities as petroleum exploitation. Developed countries opposing the double standard probably will find these provisions acceptable, but it is likely that the LDCs at the next session of the Conference will attempt to significantly broaden the provisions.

On the issue of vessel-source pollution beyond the territorial sea there appeared to be a strong trend in Geneva toward exclusive

international vessel discharge standards. However, three exceptions to exclusive international standard setting beyond the territorial sea are recognized in the single negotiating text on pollution: the right of a state to set higher standards for its own ships; the right of a coastal state to establish higher standards within its economic zone for "vulnerable areas," such as the Arctic, where climatic conditions create exceptional navigational hazards; and the right of a coastal state to set higher standards within its economic zone for "special areas," where the character of maritime traffic and the oceanographic and ecological conditions warrant special measures to prevent vessel-source pollution. The "vulnerable areas" provision is not supported by the LDCs or most maritime states, but is strongly desired by Canada and was included in the single text at the request of the USSR. The "special areas" provision has some support among the LDCs. The US proposal for the retention of the existing right of a state to establish standards higher than the international discharge regulations for vessels entering its ports continues to be strongly opposed by the maritime nations.

In Geneva some LDCs advocated coastal state enforcement of international vessel discharge standards in the entire 200-mile economic zone, but many LDCs privately indicated support for including the US proposal for port state enforcement as part of the overall system to control vessel-source pollution. The single text, however, reflects the position of the maritime nations, in that it provides for flag state preemption of any port or coastal state prosecution of violators, even in the territorial sea. The coastal developing nations can be expected to strongly react to these provisions, to the failure of the pollution single text to clearly identify the right of the coastal state to establish higher vessel discharge standards for the territorial sea, and to those provisions in the single negotiating text on the territorial sea that would restrict coastal state standard setting and enforcement.

Scientific Research

Negotiations at Geneva on scientific research -- one of the most contentious issues -- did not go well for the United States and other nations concerned with assuring maximum freedom of marine research. Most LDCs continued their efforts to place explicit coastal state consent restrictions on all research conducted in areas under national jurisdiction. As an alternative to the coastal state consent regime, many Western European nations and a large group of landlocked and geographically disadvantaged states proposed an obligations regime. To conduct research in the economic zone and continental shelf area beyond the territorial sea of the coastal state, the researcher is required under this regime to comply with a series of internationally agreed obligations -- such as providing the coastal state with advance notification of the research project, the results of the project, and assistance in assessing the data.

A third approach -- proposed by the USSR, most Eastern European nations, and others -- basically consists of a combination of the coastal state consent and researcher obligations regimes. It provides for explicit coastal state consent for all research related to the exploration and exploitation of the living and non-living resources of the economic zone and continental shelf. Fundamental research -- i.e., research not related to resources -- would require the researcher to fulfill a series of obligations in lieu of coastal state consent.

The single negotiating text on scientific research selects among the competing approaches. In the economic zone and continental shelf area it requires coastal state consent for research related to resources and researcher compliance with a set of obligations for fundamental research. The main problem with the single text is the absence of a clear definition or limitation of "resource-related research." Virtually all fundamental research data can be interpreted to provide some information on resources. Therefore, in the absence of a clear limitation on "resource-related research," practically all

research can be viewed as resource oriented and subject to coastal state consent. Future negotiations are likely to focus on this distinction between resource and non-resource related research. The United States and other research states will seek to exclude the greatest portion of research from the requirement of coastal state consent, no small task in light of the continued attempts by most LDCs at Geneva to "territorialize" the economic zone.

Future negotiations must also resolve the inconsistencies between the scientific research single negotiating text in Committee III and the single text on the economic zone and continental shelf in Committee II, which would subject all research in the zone and shelf area to coastal state consent. A similar problem exists in regards to the international deep seabed area -- the scientific research single text requires notification be given the international Authority before research is conducted in the international area, while the research provision in the deep seabed single text in Committee I can be construed as requiring the consent of the Authority.

Deep Seabeds

The lack of progress on the deep seabed issue in Committee I remains the major obstacle to the satisfactory completion of a comprehensive oceans treaty. After showing some initial flexibility, the Group of 77 -- the developing country caucus -- retreated to its basic ideological stand at the end of the Geneva session. Following efforts in the early weeks of the session to negotiate the key question of who may mine the minerals on the floor of the deep seabed, the LDCs succumbed to extremist pressures within the Group of 77 and again insisted that the International Seabed Authority (ISA) should have complete discretion over exploitation throughout the international area.

Several alternative methods of exploitation were discussed. The system of joint ventures, with the possibility of profit-sharing with the Authority, was closely examined. The United States and the Soviet Union independently proposed "reservation of areas"

systems. Under the American approach, an applicant for a joint venture would choose two mine sites. The Authority would designate one site as a reserved area while the entrepreneur would begin operations at the second locale. In the reserved areas, the Authority would negotiate with applicants for the most favorable financial terms and commitments to transfer of technology. The Soviet proposal would grant states mining rights in selected reserved areas, while the Authority would have complete discretion over exploitation in the remainder of the international area.

Algeria and Tanzania effectively guided the Group of 77 in its rejection of the US and Soviet proposals. The two African nations successfully played upon uncertainties of some developing states and their fear that, if the LDCs were divided, their interests would be ignored by the developed states. They were also able to hold the Group of 77 together by pointing to the division between the United States and the USSR on the fundamental issue of exploitation.

Many of the LDCs feel that the International Seabed Authority must have the freedom of choice to decide whether to mine the seabed itself or to enter into service contracts, joint ventures, or other forms of association with firms or socialist state enterprises for the extraction of seabed minerals. They do not want the Authority to be obliged by treaty articles to reserve portions of the seabed for the developed states or to be permanently required to enter into joint ventures or other contractual relationships with entities from the United States, Japan, Europe, or the Soviet Union.

To some extent, progress in Committee I was inhibited by a lack of unity among the major industrialized states. The Group of Five (United States, United Kingdom, France, USSR, and Japan) could not agree on the urgency to move toward compromise solutions. The Federal Republic of Germany and France remained notably conservative and were not forthcoming in seeking to accommodate the desires of the developing states.

A private working group comprised of 8 LDCs and 5 industrial states endeavored to assemble an acceptable set of draft articles on the deep seabed regime and machinery. Chaired by Christopher Pinto of Sri Lanka, this Group of 13 introduced at mid-session a draft of basic conditions that outlined a system of exploitation based on area reservation similar to the Soviet proposal. This elaboration of a parallel system (whereby the Authority directly exploits at the same time that firms and state enterprises exploit under a separate arrangement) was intensively considered before final rejection by the Group of 77. The LDCs ideological difficulty in accepting two separate regimes for the international area was cited as the major reason for the rejection of the working group's draft.

The Chairman of Committee I, Paul Engo of Cameroon, only partially utilized the working group's draft in preparation of the final set of draft articles that was submitted to the Conference as the Committee's "single negotiating text." The latter text basically represents the views of the Group of 77 and does not meet the requirements of most of the developed states.

The single text would subject only the first ten joint venture contracts to the treaty's basic conditions of exploration and exploitation; thereafter, the Authority would be free to negotiate contracts subject to a changed set of basic conditions. Further, the Authority would be empowered to reserve areas for its own use, even from among the initial ten sites selected by parties holding joint venture contracts. The "working group text," a potentially important document in future deep seabed negotiations, would subject all activities in the area to the basic conditions set forth in the treaty and would not specifically entrust the Authority with the power to reserve areas for its own use.

The alternate texts also differ markedly on the structure and powers of the Authority's machinery. The single text does not limit the powers of the Assembly. Additionally it would structure the proposed 36-member Council in a manner that would not assure a seat for the United States and would establish

Council voting rules that would make it difficult for the industrialized states to block a decision by the majority LDCs. The working group's text, however, limits the powers of the Assembly to those functions listed in the treaty and establishes criteria for Council membership that assures a permanent seat for the United States. It would also make it easier for the developed nations to block LDC initiatives.

Both texts address the issue of protecting landbased producers of hard minerals from adverse effects of seabed mining, but the working group recommends limiting impact consideration to developing countries. The Pinto text would also structure the economic Planning Commission, where impact complaints are to be heard, so that petitioners seeking relief from the effect of seabed mining on their economies would face difficult voting rules. This would tend to assure the continuity of mining activities by the operators once exploitation had begun.

The single text drafted by Chairman Engo would establish the Authority as the "center for harmonizing and coordinating scientific research," an imprecise delegation of authority that might be interpreted by the Assembly or Council as giving the Authority the right to grant or deny consent to parties seeking to conduct research on the high seas. Moreover, states would be obligated to disseminate their research results through the Authority. The working group's text is far more liberal. The only obligations on states concern research relevant to resources; all other research is unregulated. Resources-related study would be subject to certification by the Authority only as to the competence of entities and to a nonspecific obligation of states to notify the Authority and to disseminate results through international channels.

The two texts also diverge on the issue of compulsory dispute settlement. The single text does not restrict the jurisdiction of the Tribunal -- the "oceans court" that would be established by the treaty -- to disputes relating to mining activities in

the international area. It also permits the Authority to negotiate contracts that do not grant jurisdiction to the Tribunal, a feature inimical to the interests of developed countries. The working group text, however, restricts the Tribunal's jurisdiction to activities in the area but grants it jurisdiction over all contracts. By giving the Tribunal the right to decide disputes relating to the terms and conditions of all contracts entered into by the Authority, the Pinto text, in effect, prohibits the Authority from contracting out of the Tribunal's jurisdiction.

In sum, little progress was made at Geneva in bridging the ideological gap between the developed and developing nations concerning the exploitation of deep seabed minerals. The Group of 77 may have been anticipating the special UN General Assembly session on economic development and cooperation that convenes in September, not wanting to prejudice its bargaining leverage for a "New International Economic Order" by granting concessions on seabed mining. There is a possibility that the Third World may remain unresponsive on the seabed issue until the developed states agree to discuss proposals that would tie prices of oil and raw materials to an index of industrial goods purchased by the LDCs.

Transfer of Technology

Another aspect of the "New International Economic Order" emphasized by the developing countries in the UN General Assembly and the LOS Conference has been the transfer of technology. At Caracas and Geneva, however, this issue was given little in-depth attention. The LDCs, who submitted technology transfer proposals in these negotiations, voiced disappointment over the failure of industrialized nations to forward proposals on the issue. Some industrialized nations have been quick to point out that their positions on the issue were included in their scientific research and marine pollution proposals.

The latest LDC proposal -- submitted in Committee III near the end of the Geneva session by Iraq on behalf of the Group of 77 -- was generally well received, but a few of the provisions were termed unacceptable by some industrialized nations. In

regard to provisions relating to the international seabed area the United States declared it was impossible for it to agree to a provision calling for the transfer of patented technology. Except for the few contentious points like the above the industrialized nations appear ready to accept the principles in the single negotiating text on the transfer of technology.

Dispute Settlement

Dispute settlement -- the sine qua non to any workable LOS treaty -- was discussed at Geneva but no accord was reached on its framework. Although some gaps were narrowed, the debate largely bogged down over clashing ideologies, goals, and methods. Controversy centered on setting up a compulsory-jurisdiction system for all disputes rising from the convention; creating an LOS Tribunal; relating special methods with overall dispute-settlement machinery; forming a compulsory conciliation procedure; and handling jurisdictional problems of plurality (the International Court of Justice, LOS Tribunal, and arbitration), of exclusive national control in the economic zone, and of national-international delimitation.

Because dispute settlement cuts across the whole LOS spectrum, it came up at Geneva in several arenas besides the 60-odd nation informal Working Group on Settlement of Disputes. The clearest consensus was reached in Committee I where a majority favored a tribunal with distinct jurisdiction over all deep-seabed matters. The Dispute Settlement Working Group's final text, on the other hand, showed more discord than accord. The brief opening section -- urging parties to solve disputes through the UN Charter's Article 33, their own peaceful means, and regional or special agreements -- was the only part agreed on. There was a wide split over the three annexes that follow. Annex I outlines steps toward arbitration and describes three courts (an arbitral tribunal, a Law of the Sea Tribunal, and the International Court of Justice) that might rule after all other efforts have failed. The text's comprehensive, compulsory approach through this point is backed by

the United States as well as by other nations (especially African) that feel the tribunal's inclusion might help develop LDC support for compulsory dispute settlement.

The Latins, the USSR and France strongly oppose the LOS Tribunal -- for different reasons -- but would accept dispute settlement conditionally. The Latins object to dispute settlement in the economic zone; the French would accept it only for fisheries, pollution, and scientific research; and the Soviets want it only for fisheries and the deep seabed. Japan and Canada also oppose the LOS tribunal idea, favoring strong coastal-state regulatory discretion with few, if any, controls. These states support the type of functional approach called for in Annex II which suggests special handling of individual disputes -- in this case France's three priorities. Annex III urges parties to forestall disputes by informing one another and the UN Secretariat before they adopt or apply new measures.

Such diversity makes it unclear whether there will be a comprehensive dispute-settlement mechanism or whether each issue will be dealt with separately. It is also unclear whether the dispute-resolving mechanism will be the International Court of Justice -- opposed by some because its rule is limited to governments and because it takes so long to hand down judgments -- an arbitral body, or the much-disputed LOS Tribunal.

Another major question mark is posed by an article which, if agreed on, will allow all signatories to refuse dispute settlement in virtually any categories they choose, thus negating the whole rationale for a binding dispute-settlement mechanism.

Prospects

The LOS undertaking clearly is at a turning point. It is still problematical whether the upcoming New York session will go forward or bog down on a few highly contentious issues. The answer lies in whether or not the participating nations decide that a timely conclusion of an overall treaty is sufficiently in their national interests to make the necessary concessions to deal with realities. Without a genuine will on the part of

participating nations to reach accommodation, the single negotiating text could provide nothing more than another vehicle to restate or reintroduce fundamental differences.

No nation is likely to be fully satisfied with the negotiating text as is, but if the conferees use it as the basis for serious negotiations and work together to shape it by amendments into a more widely acceptable document, the chances for a successful outcome will be appreciably improved. On the other hand if the Group of 77 refuses to give any ground on the deep seabed issue, or if a new coalition of dissatisfied nations forms and insists on going back to the drawing board on some other important issue, then it is unlikely that a broadly acceptable treaty can be produced within the near future.

Developments on the LOS front thus far during the intersessional period have been encouraging. The informal single negotiating text is being studied by the various concerned governments, and no nation or group of nations has rejected this approach out of hand. The general reaction, in fact, has been one of appreciation of a significant step having been taken toward the goal of obtaining a comprehensive oceans treaty. Bilateral and multilateral discussions are taking place among concerned countries, and informal working groups are continuing discussions on several LOS subjects with the aim of ironing out differences. Finally the various, and overlapping groupings of nations such as the Group of Five, the Group of 77, the Organization for African Unity, etc., are using this interim period to evaluate their present stands on the various issues and to plan new courses of action when the LOS Conference resumes in New York. All of this preparatory activity has been facilitated by the existence of the single negotiating text.

On the other hand, there are strong pressures in many countries, including the United States, for unilateral action to resolve immediate maritime difficulties, especially those involving fisheries. For instance, Iceland recently announced that it would further extend its fishing zone to 200 miles this October. Meanwhile, the

seizure of fishing vessels in coastal waters around the world and other instances of maritime jurisdictional disputes continue unabated. There is also a demand for unilateral exploitation of deep seabed minerals among some technologically advanced nations.

Such actions and the clear threat of ever increasing quarreling in the future over the use of the seas and the disposition of marine resources could prove to be a strong catalyst for getting on with the LOS task. Spokesmen of several nations, both developing and developed, have voiced concern over the growing threat of unilateralism and the complications such action poses to the negotiation of an effective LOS Treaty. They feel that without the order and mutual understanding that a comprehensive treaty would bring, prospects are for escalated jousting among nations, with competing ocean claims leading inevitably to severe strains in the international community.

Although some of the LOS issues seem remote and somewhat obscure to the uninitiated, the negotiations are not being conducted in a vacuum. Decisions on the LOS will be influenced as much by external factors -- political, economic, social -- as by the inherent worth of the individual issues. Thus, such major issues as the Middle East controversy and the economic dialogue between producing and consuming nations impinge heavily on the LOS discussions. In effect, the fortunes of the LOS endeavor are tied closely to the temper of the times.

Even under the most optimum conditions this March at New York, however, the sweep of the LOS Conference and the complexities of the many issues involved point to the need for at least an additional substantive session before the planned final signing session can take place. Still, the interdependence of the various LOS issues is such that once agreement is reached on individual aspects, the process of completing the LOS jig-saw puzzle could accelerate surprisingly. This process is already underway in a modest way. It remains for the current intersessional discussions and the New York session to determine whether this trend will be given additional momentum or whether the entire effort will languish.